STATE OF MICHIGAN

COURT OF APPEALS

KEVIN G. KLEVORN, Petitioner-Appellant, v CITY OF BOYNE CITY, Respondent-Appellee.	UNPUBLISHED February 2, 2010 No. 286870 Tax Tribunal LC No. 00-321687

KEVIN G. KLEVORN, Petitioner-Appellant, v TOWNSHIP OF EVELINE, Respondent-Appellee.	 No. 286872 Tax Tribunal LC No. 00-321688

Before: Bandstra, P.J. and Sawyer and Owens, JJ.

BANDSTRA, J. (*concurring*).

I concur with the majority that the taxable value of the property at issue was not uncapped when, because of Thelma Klevorn's death, the joint tenancy of the property was terminated. As the majority notes, we are bound to reach that result under *Klooster v City of Charlevoix*, ___ Mich App ____; ____ NW2d ____ (Docket No. 286013, issued December 15, 2009).

I agree with the conclusion reached in *Klooster*, but I question its reasoning. The statute at issue provides that a transfer of ownership does not include:

> (a) transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of

> ownership of the property is an original owner of the property. . . . [MCL 211.27a(7)(h)].

Thus, "[a] transfer creating or terminating a joint tenancy between two or more persons" does not uncap the taxable value of an affected property in situations where certain "if" conditions, when applicable, are satisfied. *Id*.

The first condition applies in all situations – "at least one of the persons" had to be "an original owner of the property before the joint tenancy was initially created." As the lead opinion points out, that condition is satisfied here because Martha Klevorn owned the property before the joint tenancy was initially created, in 1987, by a warranty deed transferring its ownership to herself and Kevin Klevorn.

Additionally, apparently only in situations like this one involving the termination of a joint tenancy ("if the property is held as a joint tenancy at the time of conveyance"), another condition must be satisfied. "(A)t least one of the persons" had to have been "a joint tenant when the joint tenancy was initially created and that person" had to have remained "a joint tenant since the joint tenancy was initially created." This conditional language must be satisfied here because "the property [was] held as a joint tenancy at the time" Thelma Klevorn died thus terminating the joint tenancy.[1] Again, this condition is satisfied under the facts of this case: both Martha and Kevin Klevorn were joint tenants when the joint tenancy was initially created and both remained joint tenants until Martha Klevorn's death terminated the joint tenancy.

For these reasons, I agree with the majority opinion that we should reverse and remand.

/s/ Richard A. Bandstra

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[1] *Klooster* reasoned that Thelma Klevorn's death would not constitute a "conveyance," meaning that this second conditional requirement was not "trigger[ed]," *id*., slip op at p 3, i.e., that it did not have to be satisfied. Reading the statutory language as a whole, I conclude that "conveyance" is simply shorthand, used instead of repeating "[a] transfer creating or terminating a joint tenancy between two or more persons," the general subject matter of the statutory section. Thus, I conclude that Martha Klevorn's death was a "conveyance" as it constituted a "transfer . . . terminating a joint tenancy between two or more persons" but that, nonetheless, all of the conditions of the statute have been satisfied and this transfer did not uncap the property's taxable value.